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In re Application of :
STOY et al. :
Application No.: 10/541,635 : DECISION
PCT No.: PCT/US03/28878 :
Int. Filing Date: 12 September 2003 :
Priority Date: 13 September 2002 :
Attorney Docket No.: 1135-5PCT :
For: IMPLANT MANIPULATION AND
STORAGE TOOLS

This is a response to applicants' Petition to Withdraw the Holding of Abandonment under 37 CFR 1.8(b)" filed 26 December 2007 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 03 March 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements (PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497(a) and (b).

On 23 November 2007, a Notification of Abandonment was mailed to applicant indicating that no reply to the 905 had been submitted.

On 26 December 2007, in response to the Notification of Abandonment, applicants filed the instant submission, which was accompanied by: a copy of "Response to Notification of Missing Requirements under 35 U.S.C. 371" and executed declarations, in compliance with 37 CFR 1.497(a) and (b). Petitioner alleges that the executed declarations were submitted by first class mail with the United States Postal Service on 23 March 2006 along with a copy of four executed declarations.

DISCUSSION

A review of the application file reveals that the original declarations allegedly filed 23 March 2006 under 37 CFR 1.8 is not located in the application file.

37 CFR 1.8(b) states:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Applicant has submitted a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing. Thus, Items (1), (2) and (3) above are satisfied.

The Notification of Abandonment is hereby VACATED.

The declarations filed on 26 December 2007 is accepted in lieu of the originally filed declarations filed 23 March 2006. The \$130 surcharge for filing the declaration after the thirty month period will be charged to applicant's deposit account per their authorization. A review of the declarations reveals that they meets the requirements of 37 CFR 1.497(a) and (b).

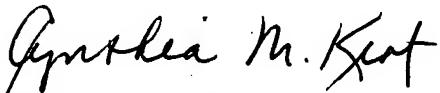
CONCLUSION

Therefore, applicants' petition under 37 CFR 1.8(b) is **GRANTED**. The declarations filed 26 December 2007 are accepted in lieu of the declarations, originally filed on 23 March 2006. The \$130 surcharge for filing the declaration

declarations, originally filed on 23 March 2006. The \$130 surcharge for filing the declaration after the thirty month period will be charged to applicant's deposit account per their authorization.

The 23 November 2007 Notification of Abandonment is hereby
VACATED.

The application will be forwarded to the United States Designated/Elected Office for further processing in accord with this decision. The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date is **26 December 2007**.



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